

REMARKS

This Amendment and Remarks are filed in conjunction with filing a Request for Continuing Examination.

Status of the Claims

Claims 1-62 are canceled.

The new claims 63-82 take in considerations Examiner's previous rejections. The new claims are supported as follows:

Preamble and inactive and active chondrocytes are described in the specification on page 22, lines 10-18 (22:10-18).

Step a) isolation of chondrocytes is described on 23:7-10.

Step b) expanding of chondrocytes is described on 24:11-16.

Step c) suspending chodnrocytes is described on 24:30-37.

Step d) matrix is described on 28:19-31 and seeding chondrocytes suspension is described on 25:35-37 and 26:1-7.

Step e) activation step is described on 36:31-37 and 37:1-4; activation step time is described on 22:18-20; resting period is described on 14:1-3 and 37:1-4; flow rate is described on 36:8-13.

Ratio of extracellular matrix and chondrocytes is described on 22:7-9.

Materials for collagenous support matrix are described on 28:19-31.

Oxygen concentration is described in Table 4 (2%) and 49:30 (1-20%).

Other dependent claims and their limitations are within the

cited support in the specification.

Rejections previously Advanced by the Examiner

In order to provide claims in better conditions for examination and allowance, Applicants address the Examiner's previous rejections.

Rejections under 35 U.S.C. 112, Second Paragraph

Claims 43-62 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner argues that the claims are confusing in that they do not set forth clear process steps.

Applicants have rectified this problem by canceling claims 43-62 and replacing these claims with new claim 63-78.

The independent claims 63 and 78 are directed to an implantable construct prepared by a process where the process steps (a) - (e) needed to derive the construct of the invention are clearly identified as suggested by the Examiner. Support for each step of the independent claims is identified above.

It is believed that the new claims meet Examiner's rejections and that the rejections under 35 U.S.C 112, second paragraph are overcome and should be withdrawn. It is so respectfully requested.

Rejections under 35 U.S.C 102 and 103

Claims 43-47 and 44-62 have been rejected under 35 U.S.C. 102(a) as being anticipated by Smith et al. (6,528,052) or as being unpatentable over Smith (above) and Burg, Atkins, Bachrach and further in view of Bellamkonda.

Applicants respectfully submit that with the cancellation of Claims 43-62 and with submission of the new claims, these rejections are no longer valid. The reason is that Applicants are now claiming a construct comprising chondrocytes rejuvenated by the process of the invention resulting in the claimed construct. Neither Smith nor other cited references disclose or suggest the construct comprising rejuvenated chondrocytes able to produce new extracellular matrix macromolecules produced by the process claimed herein.

Applicants respectfully submit that not only is the process inventive, but also the product made by that process is inventive.

SUMMARY

In summary, Applicants canceled claims 1-62 and submit herewith the new claims 63-82. It is respectfully submitted that the new claims presently in the application are allowable. Notice of allowance is respectfully solicited.

Respectfully submitted,


Hana Verry (Reg. No. 30,518)
Attorney of Record

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PETERS VERNY, LLP
425 Sherman Avenue, Suite 230
Palo Alto, CA 94306
TEL 650 324 1677 / FAX 650 324 1678
Atty. Dkt.: 3831.08
Customer No.: 23308